



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of Environmental
Conservation**

DIVISION OF WATER
Wastewater Discharge Authorization Program

555 Cordova Street
Anchorage, Alaska 99501
Main: 907.269.6285
Fax: 907.269.3487

September 28, 2012

DEC File No: 920.48.007

Mr. Michael A. Bussell
Director, Office of Water and Watersheds, Suite 900
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, WA 98101

**RE: Alaska Department of Environmental Conservation Final Section 401 Certification
for the Small Vessel General Permit for Discharges Incidental to the Normal
Operation of Vessels Less Than 79 Feet in Length**

Dear Mr. Bussell:

On November 30, 2011, the Environmental Protection Agency (EPA) public noticed a draft of the Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (sVGP). This National Pollutant Discharge Elimination System (NPDES) general permit regulates discharges to the waters of the United States extending to the three-mile demarcation of the territorial seas and inland or coastal waters of the State of Alaska from any non-recreational, non-military vessels less than 79 feet in length that are operating in the capacity of providing transportation.

The Alaska Department of Environmental Conservation (DEC or the Department) has reviewed EPA's draft 2013 sVGP and supporting fact sheet, along with EPA's request for DEC's Section 401 certification of the 2013 sVGP. The Department certifies that there is reasonable assurance that the activities and the resulting discharges are in compliance with the requirements of Section 401 of the Clean Water Act, which includes the Alaska Water Quality Standards codified in 18 AAC 70, provided that the terms and conditions of the enclosed certification are adhered to.

On page 45 of the sVGP fact sheet, EPA states "The sVGP merely authorizes point source discharges that previously existed but were unregulated by EPA's NPDES regulations." Because discharges pre-existed and issuing the sVGP should not result in lowering water quality, but rather should improve the quality of the effluent discharged, EPA determined that an antidegradation review is not triggered. Based on DEC's concurrence with EPA's assessment that the lowering of water quality is not expected as a result of the newly implemented permitting requirements, DEC has determined an antidegradation review is not required for this Section 401 certification.

Department regulations provide that any person who disagrees with this decision may request an informal review by the Division of Water Director in accordance with 18 AAC 15.185 or adjudicatory hearing in accordance with 18 AAC 15.195 - 18 AAC 15.340. An informal review request must be delivered to the Division of Water Director, 555 Cordova Street, Anchorage, AK 99501 within 15 days after receiving this permit decision. An adjudicatory hearing request must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Street, Suite 303, Juneau, AK 99811, within 30 days after the date of this permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

By virtue of this letter, we are advising EPA of our actions and enclosing a copy of the final Section 401 certificate for their use.

If you have any questions regarding this final Section 401 certification, please contact Wade Strickland at wade.strickland@alaska.gov.

Sincerely,



Wade Strickland
Program Manager

Enclosure: Final Section 401 Certificate of Reasonable Assurance

cc: via e-mail

Ms. Lynn J. Tomich Kent, DEC/ANC
Ms. Michelle Bonnet, DEC/ANC
Mr. Andrew Sayers-Fay, DEC/ANC
Ms. Sharon Morgan, DEC/JUN
Mr. Robert Edwardson, DEC/JUN
Mr. Gerry Brown, DEC/ANC
Ms. Ruth Hamilton Heese, AK AG Office/JUN
Mr. Mike Lidgard/EPA Region 10
Ms. Diane Soderlund, EPA Region 10
Ms. Hanh Shaw, EPA Region 10
Ms. Cindi Godsey, EPA Region 10/ANC

**STATE OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
FINAL SECTION 401 CERTIFICATE OF REASONABLE ASSURANCE
SMALL VESSEL GENERAL PERMIT**

A Certificate of Reasonable Assurance (certification), as required by Section 401 of the Clean Water Act (CWA), was requested by the Environmental Protection Agency (EPA) Region 10 for National Pollutant Discharge Elimination System (NPDES) Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less Than 79 Feet (sVGP) on December 15, 2011. A certification is required for the proposed activities because the activities will be authorized by an EPA NPDES general permit and result in discharges to waters of the United States located in the State of Alaska.

The sVGP covers incidental discharge to waters of the United States resulting from non-recreational, non-military vessels less than 79 feet in length operating commercially in a capacity as a means of transportation. Due to the nature of vessel discharges, EPA determined that deriving numeric limits are not practicable, and consequently derived permit limitations that are technology-based, best management practices (BMPs) developed through best professional judgment as authorized under CWA 402(a)(1) and 40 CFR 125.3. These BMPs are designed to minimize the discharge of pollutants associated with activities that are incidental to normal vessel operation. The applicable BMPs are developed according to the following 10 management areas as described in the sVGP:

- General Management
- Fuel Management
- Engine Oil Control
- Solid and Liquid Waste Management
- Deck Washdown and Runoff and Above Water Line Hull Cleaning
- Vessel Hull Maintenance
- Graywater
- Fish Hold Effluent
- Ballast Water
- Seawater Cooling Overboard Discharge.

The Department reviewed the EPA draft NPDES permit and certifies that, upon compliance with specified conditions, there is reasonable assurance that the limitations are in compliance with the requirements of Section 401 of the CWA, which includes the Alaska Water Quality Standards (WQS), codified in 18 AAC 70. Through this certification, in accordance with 18 AAC 15.120 Adoption of NPDES Permits, the final NPDES permit will constitute the permit required under Alaska Statute (AS) 46.03.100 Waste Disposal Permit, provided that the terms and conditions of the final certification are made part of the final NPDES Permit. The Department is specifying the following permit terms and conditions under authority of AS 46.03.110(d).

Terms

- 1) This Section 401 certification shall become effective on the date when EPA's final sVGP becomes effective.
- 2) If the Department determines that vessel discharges covered under the VGP cannot comply with the terms and conditions of this certification or WQS, then this certification may be modified to include different terms, conditions, or requirements consistent with applicable laws, regulations, or judicial orders. The Department will public notice substantial proposed modifications to this certification. Insignificant technical corrections or clarifications to this certification (e.g., typos) will not be public noticed.
- 3) All terms, requirements, limitations, and restrictions specified in this Section 401 certification shall be included in Part 5 of the sVGP and shall be primarily enforced by EPA through the sVGP.
- 4) EPA shall direct and ensure sVGP permittees undertake immediate corrective actions to mitigate noncompliance with any terms, stipulations, limitations, or restrictions specified in this Section 401 certification. These actions shall not preclude DEC from taking enforcement action authorized by Alaska law.
- 5) For violations that occur within State waters, permittees shall notify and provide DEC electronic copies of any noncompliance reports required under 40 CFR 122.44(i)(5).

Conditions

- 1) All discharges authorized by the sVGP to waters of the United States extending to the three-mile demarcation of the territorial seas and inland or coastal waters of the State of Alaska shall not result in a violation of Alaska water quality criteria, found in 18 AAC 70, in the water body.

Rationale: Vessel operators must implement the BMPs in the sVGP to the degree necessary to ensure discharges comply with the applicable water quality criteria for the subject water body.

- 2) Permittees covered under the sVGP shall undertake immediate corrective actions to mitigate noncompliance or violations with any terms or conditions specified in this Section 401 certification. EPA's regulations of vessels under the VGP shall not preclude DEC from regulating vessels or taking enforcement action authorized by Alaska law.

Rationale: EPA is the primary authority responsible for ensuring compliance with the EPA-issued sVGP. However, the Department does not waive their rights to regulate vessels and or take enforcement action in accordance with Alaska law.

- 3) Permittees must be aware of the status of the water bodies they are traveling through, specifically whether the water bodies are impaired and have, or do not have, an EPA-approved Total Maximum Daily Load implementation plan prepared under CWA 303(d).

Rationale: The location of impaired waters of the United States must be known prior to the discharge activity. The permittees are responsible for identifying areas where discharges are prohibited, including accessing CWA 303(d) list of impaired waters or the State's most current Integrated Water Quality Monitoring and Assessment Report.

September 28, 2012
Date

Wade Strickland
Wade Strickland, Program Manager